

United States
Circuit Court of Appeals
For the Ninth Circuit. 2

MANA TRANSPORTATION COMPANY, LIM-
ITED, a Hawaiian Corporation,
Appellant,

vs.

OLIVER T. SHIPMAN, Treasurer of the County
of Hawaii, and COUNTY OF HAWAII,
Appellees.

Transcript of Record.

Upon Appeal from the Supreme Court of the Territory of
Hawaii.

FILED

JUN 15 1931

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Filed at 2:40 o'clock P. M. July 2, 1930.

In the Circuit Court of the Fourth Circuit, Territory of Hawaii.

AT CHAMBERS—IN EQUITY.

Suit for Injunction Against Enforcement of Illegal Tax and for Other Equitable Relief.

THE MANA TRANSPORTATION COMPANY,
LIMITED, an Hawaiian Corporation,
Complainant,

vs.

OLIVER T. SHIPMAN, Treasurer of the County of Hawaii, and COUNTY OF HAWAII,
Respondents.

COMPLAINANT'S BILL OF COMPLAINT.

To the Honorable HOMER L. ROSS, Judge of the Circuit Court of the Fourth Judicial Circuit:

The bill of complaint of the Mana Transportation Company, Limited, an Hawaiian corporation, respectfully shows:

1.

That the Mana Transportation Company, Limited, is a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, and has its principal place of business at Hilo, in the County and Territory of Hawaii, and is named herein as complainant; that Oliver T. Shipman, one of the respondents herein named, is now residing permanently in said Hilo, and that he is now and at all times hereinafter mentioned has

been the lawfully elected, qualified and acting Treasurer of the County of Hawaii; and that the County [1*] of Hawaii, herein named as respondent, is a body politic and corporate, organized and existing under and by virtue of the laws of the Territory of Hawaii, as provided by Chapter 116 of the Revised Laws of the Territory of Hawaii, 1925, as amended.

2.

That the complainant is principally engaged in the business of transporting freight at said Hilo, and in connection with said business uses a large number of automobile trucks and other motor vehicles, and has at the present time in its possession and for use in its business twenty trucks.

3.

That the Territory of Hawaii, by its Act duly passed by the Legislature of the Territory of Hawaii and duly enacted as provided by the Organic Act of the Territory of Hawaii, and approved by the Governor of the Territory of Hawaii, as more fully set forth in the Revised Laws of the Territory of Hawaii 1925, in Section 1306 and following, and as amended by the Legislature of the Territory of Hawaii at its session of 1927, by an Act duly approved by the Governor, and which is known as Act Number 172 of the Session Laws of 1927, which Act is now alleged to be in full force and effect, except as amended by Acts 180 and 246 of the said Legislature and both approved by the Governor

*Page-number appearing at the foot of page of original certified Transcript of Record.

April 29th, 1925, and as again amended by an Act of the said Legislature approved by the Governor April 26th, 1927, all of which Acts have not been repealed by any Act of the Legislature, and by all of said Laws and Acts the said Legislature has attempted to provide by law that all owners [2] of automobiles and other power driven vehicles shall pay to the Treasurer of the County in which the owner lives and operates his said motor vehicle, on all such motor vehicles owned by him, a property tax computed by weighing the car, together with its equipment and accessories, and also its water and fuel, and assessing each said car at one cent (1¢) per pound of the weight so found; and said tax, by the said several Acts of the Legislature, is due and payable to the Treasurer of the County on January 1st of each year, and shall become delinquent on March 1st thereafter. And it is further provided by said Laws and Acts, that any motor vehicle on which the tax so levied by weight shall be unpaid on the date when the same becomes delinquent as provided by law, may be seized by the Treasurer, his Deputy, or by any Sheriff, Deputy Sheriff or any police officer of the County wherein the car is owned and registered, or by any person acting for any of the said officers; and being so seized such car shall be held for a period of ten days, during which term such vehicle so held may be redeemed by the owner by the payment of the said taxes so levied and assessed as aforesaid by the said owner, together with a penalty of One Dollar (\$1.00) for each vehicle and also all

costs of storage and other charges incident to the seizure. Having seized the said vehicle, the Treasurer of the County or those acting for him, may sell the same at public auction to the highest bidder, after giving public notice of such sale, and the taxes so levied and assessed, together with all penalties, are required by said laws to be retained by the County, through its Treasurer, as a county realization. [3]

4.

That the complainant in pursuit of its business and calling as aforesaid, uses as a part of its equipment the said twenty motor vehicles of the kind described in said Laws and Acts, which said twenty motor vehicles are of the aggregate value of \$9,000.00; that the respective values of the several motor vehicles vary with and depend upon the make, size, equipment, length of time in use, condition of engine, bodies and other equipment, and such value has no relation whatsoever to the weight thereof; that the aggregate weight of the said motor vehicles, together with equipment, water and fuel, is 78,205 pounds, and by the terms of the said Laws and Acts there would be payable to the Treasurer of the County of Hawaii, as a county realization, the sum of \$782.05 as of January 1st, 1930, which said tax the complainant has refused to pay on the ground that the same is illegal; and thereafter, to wit, on March 1st, 1930, there would have accrued under the said Laws and Acts as penalties the sum of \$20, and the two amounts, in the aggregate, are the sum of \$802.05, which sum is now demanded by

the Treasurer of the County of Hawaii of this complainant; and the said Treasurer, acting by himself and through the County of Hawaii, and the officers hereinbefore mentioned and referred to, has publicly announced that the County of Hawaii is entitled to the payment by the owners of one cent (1¢) per pound tax by weight on every motor vehicle in the said County, however owned or however used, and he has threatened to seize all such motor vehicles upon which the said tax of one cent (1¢) per pound has not been paid under and by virtue of the said [4] Laws and Acts of the Territory of Hawaii hereinabove set forth, to seize the said twenty motor vehicles so owned by the complainant under and by virtue of the said Laws and Acts of the Territory of Hawaii, said twenty motor vehicles being more particularly described in Schedule "A" hereto attached and made a part hereof; and said Treasurer, and said other officers, all of whom are elected in the County of Hawaii, or are appointed by the Board of Supervisors of the County of Hawaii, will unlawfully and with force seize and take away from the possession of the complainant all or some of the said twenty motor vehicles, and will store the same, and after giving public notice as required by said Laws and Acts, will sell the said motor vehicles at public auction unless restrained by order of this Court.

5.

That all of said Laws and Acts so passed by the Legislature of the Territory of Hawaii, are an attempt to provide for a property tax to be levied

upon and taxed against the said twenty motor vehicles, and to be paid by this complainant, which tax when collected and has become a county realization will be expended by the County of Hawaii for the purpose of maintaining the government of the County of Hawaii, and such said Acts and Laws are void and of no force for the following reasons:

That the tax assessed and attempted to be assessed under the terms of the said Laws and Acts against the said motor vehicles so owned by the complainant and payable by the complainant, is not assessed according to the value of [5] the said several motor vehicles but according to the weight, and in the case of each vehicle is arbitrary and entirely disproportionate to the real value of the vehicle; and for these reasons the complainant, if it is required to pay said tax will be required to pay a larger tax upon automobiles of slight value than other car owners and dealers similarly situated are required to pay upon automobiles of great value, and will pay for and contribute to the County of Hawaii an undue, and, when compared with the amounts contributed by other taxpayers in the County of Hawaii similarly situated, an excessive amount and portion of the revenue required to be raised for the support and maintenance of the Government of the County of Hawaii, and an amount entirely disproportionate to the amount and value of his property as compared with the property of other residents within the County of Hawaii; and the said assessment so made and provided is relatively out of proportion to the taxable

value of other species of property owned by other persons residing and owning property in said County of Hawaii; and complainant is thereby deprived of the equal protection of the laws as granted it by the Constitution of the United States of America as the same is found in amendments numbered V and XIV.

6.

That such alleged tax so levied and assessed as aforesaid, if the same shall be taken from the complainant will be and is a taking from it of its property without due process of law, contrary to its rights as guaranteed to it by the Constitution of the United States of America, amendments V and XIV.
[6]

7.

That complainant will lose all of its property right and property in the said twenty cars if the same shall be taken from it as it is now threatened by the respondents, and it will suffer great and irreparable loss and injury by reason of the taking of said property from it and the storing of the same for the period as required by said invalid laws, and the sale thereof at auction, by which sale the amounts received by the said respondents will be greatly disproportionate to the real value, because of the fact that the sale of vehicles under such circumstances by the method provided by said Laws and Acts, to wit, at public auction, will cause said property so sold to bring at such public sale only a fractional portion of the value which the said several vehicles have, and which would be received by the

complainant if the same were sold in the regular course of business.

8.

That complainant is entirely remediless in the premises at common law because of the strictness of the rules of the common law, and unless it shall have its remedy in equity, where matters of that sort are properly considered and remedied, it will suffer great and irreparable loss.

9.

That the respondents are now about to seize the said twenty motor vehicles as they claim they have a right to do under the said Laws and Acts, and will seize, store and sell the same at public auction unless they shall be restrained by the temporary order and injunction of this Court. [7]

WHEREFORE, the complainant prays that there shall issue out of this Court and under the seal thereof several subpoenas requiring the said respondents to appear in this Court within ten days from the time of service, then and there to answer unto the complainant respecting the several matters set out in its bill of complaint; and that pending the further hearing of this cause the said respondents shall be temporarily restrained from acting under the invalid laws aforesaid, as they now threaten to do; and that upon the final hearing hereof, the respondents, and each of them, shall be perpetually enjoined against collecting or attempting to collect from the complainant any or all taxes levied or assessed, or attempted to be levied or assessed, under or by virtue of said Section 1306 of

the Revised Laws of the Territory of Hawaii, 1925, and all amendments thereto; and for costs and for such other and further relief as to the Court may seem meet.

THE MANA TRANSPORTATION COMPANY, LIMITED.

By CARL S. CARLSMITH,

Its Attorney.

Territory of Hawaii,
Fourth Judicial Circuit,—ss.

Gilbert K. Patten, being first duly sworn, says upon his oath that he is the manager of the Mana Transportation Company, Limited, complainant above named; that he has read the foregoing bill of complaint, knows the contents thereof, and that the same is true.

(Sgd.) GILBERT K. PATTEN.

Subscribed and sworn to before me on this 2d day of July, A. D. 1930.

[Seal] (Sgd.) CARL S. CARLSMITH. [8]

SCHEDULE "A."

ENGINE NUMBER	NAME AND MODEL
40829-2H	De Soto
8927183	Ford Express
A 739905	Graham Bros. Ton Truck
14730144	Ford Express
8114469	Ford Express
11117074	Ford 1 ton truck
C 14548	Federal 2 ton truck
633915	Fordson Dray
4140674	G. M. C. 1½ ton truck
1937904	Federal 1½ ton truck
31615	White 3 ton truck
847360	G. M. C. 2½ ton truck
12319737	Ford Dumper Truck
327773	Chevrolet Dumper Truck
7839914	Ford Dumper Truck
10510541	Ford Dumper Truck
2362 C. H.	Kliber 2 ton truck
25247 C.	Federal 1½ ton truck
c 34928	Dodge Bros. 3 ton truck
AA 2569549	Ford 1 ton truck [9]

Filed at 11:45 o'clock A. M., July 8th, 1930.

[Title of Court and Cause.]

RESPONDENTS' DEMURRER TO COM-
PLAINANT'S BILL OF COMPLAINT.

Come now Oliver T. Shipman, Treasurer of the

County of Hawaii, and the County of Hawaii, respondents in the above-entitled cause, and demur to the complainant's bill of complaint upon the following grounds:

1. That the complainant has not in and by its bill of complaint made or stated facts sufficient to entitle it to any relief prayed for in its said bill of complaint.

2. That the said complainant is not entitled to relief in a Court of Equity, for the reason, it has a full, complete and adequate remedy at law.

Dated at Hilo, Hawaii, this 8th day of July, A. D. 1930.

OLIVER T. SHIPMAN,

Treasurer of the County of Hawaii, and

THE COUNTY OF HAWAII,

Respondents.

By W. H. BEERS,

County Attorney, County of Hawaii and Deputy Attorney General, T. H.

Copy received and service accepted.

(Sgd.) CARL S. CARLSMITH,

For Complainant. [10]

Filed at 2 o'clock P. M., Aug. 7th, 1930.

Copy received.

(Sgd.) C. W. CARLSMITH. [11]

In the Circuit Court of the Fourth Circuit, Territory of Hawaii.

AT CHAMBERS—IN EQUITY.

Suit for Injunction Against Enforcement of Illegal Tax and for Other Equitable Relief.

THE MANA TRANSPORTATION COMPANY,
LIMITED, an Hawaiian Corporation,
Complainant,

vs.

OLIVER T. SHIPMAN, Treasurer of the County
of Hawaii, and COUNTY OF HAWAII,
Respondents.

DECREE SUSTAINING RESPONDENTS' DEMURRER TO COMPLAINANT'S BILL OF COMPLAINT.

This cause coming on for hearing on this 7th day of August, A. D. 1930, upon respondents' demurrer to complainant's bill of complaint, and the Court being fully advised in the premises and the Court having ruled that the ruling of the Court in Equity Case Number 203, to wit, Isojiro Kitagawa, complainant, vs. Oliver T. Shipman, Treasurer of the County of Hawaii, and County of Hawaii, respondents, shall be the ruling of the Court in this case; therefore upon consideration thereof,—

IT IS ORDERED, ADJUDGED AND DECREED that the complainant's bill of complaint herein be and the same hereby is dismissed and that

respondents recover their cost herein taxed at \$7.50; and the complainant to pay the cost of court taxed in the sum of \$9.75.

Dated at Hilo, Hawaii, this 7th day of August, A. D. 1930.

[Seal] (Sgd.) HOMER L. ROSS,
Judge, Fourth Circuit Court, Fourth Judicial Circuit, T. H. [12]

Filed at 2:15 o'clock P. M., Aug. 11th, 1930.

[Title of Court and Cause.]

NOTICE OF APPEAL AND APPEAL.

Comes now The Mana Transportation Company, Limited, the complainant in the above-entitled cause, and files this notice of its appeal and hereby appeals from the final decree made and entered herein on the 7th day of August, A. D. 1930, to the Supreme Court of the Territory of Hawaii.

Dated at Hilo, Hawaii, August 11th, 1930.

THE MANA TRANSPORTATION COMPANY, LIMITED,

Complainant.

By **CARL S. CARLSMITH,**

Its Attorney. [13]

CLERK'S MINUTES. [14]

[Title of Court and Cause.]

MINUTES OF COURT—AUGUST 4, 1930—
HEARING.

Monday, August 4th, 1930.

The Court convened at 10:05 o'clock A. M.

Present: Hon. HOMER L. ROSS, Judge Presiding.

BERNARD H. KELEKOLIO, Asst.
Clerk.

GEORGE R. CLARK, Reporter.

Present: Wendell Carlsmith for complainant; W. H. Beers, County Attorney, for the Treasurer. Mr. Beers stated in open court that in this matter he would like to have the Court's ruling on the demurrer, and in the other cases, Eq. Nos. 204, 205 and 206, he understands that counsel would like to file amended complaint and if so he would like to have the opportunity to file demurrers. Mr. Carlsmith suggested that all the other cases be kept here until the Kitagawa case is decided by the Supreme Court. Mr. Beers stated that in the case of Mana Transportation Co., the bill of complaint is similar to that of the Kitagawa case and therefore willing to submit the case of Mana Transportation Co. By agreement of counsel the argument on the demurrer filed in the Mana Transportation case is passed until Thursday morning. On motion of Mr. Beers

the other three cases Nos. 204, 205, 206 are passed until Thursday morning.

By the Court:

BERNARD H. KELEKOLIO,
Asst. Clerk.

[Title of Court and Cause.]

MINUTES OF COURT—AUGUST 7, 1930—
HEARING (CONTINUED).

Thursday, August 7th, 1930.

The Court convened at 10:10 o'clock A. M. [15]

Demurrer. Hearing. Present: C. S. Carlsmith and W. Carlsmith for the complainant; W. H. Beers for the respondent. Argument by both counsel on demurrer, and the Court sustained the demurrer, the reasons for this decision being the same as those in Eq. 203, *I. Kitagawa vs. O. T. Shipman, Treasurer*. In Equity—Nos. 204, 205, 206, Mr. Beers suggested that a stipulation be entered into by both counsel to the effect that whatever decision is rendered by the Supreme Court in the *Kitagawa* case they will abide by that decision. Mr. Carlsmith answered that he did not want to be tied down, altho he has no objection to the stipulation suggested. On motion of Mr. Beers these three cases, Nos. 204, 205, and 206 were passed over so that counsel may get together and arrive at some understanding regarding each of these cases. At 10:15 A. M. the Court took a recess.

By the Court:

BERNARD H. KELEKOLIO,
Asst. Clerk. [16]

Filed at 3:30 o'clock P. M., Aug. 12th, 1930. [17]

[Title of Court and Cause.]

BOND OF COMPLAINANT FOR COSTS TO
ACCRUE ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, The Mana Transportation Company, Limited, an Hawaiian Corporation, as principal, and The Hawaiian Insurance & Guaranty Company, Limited, as surety, are bound and firmly held unto James A. Thompson, Clerk of the Judiciary of the Territory of Hawaii, in the penal sum of \$50.00, for the payment of which well and truly to be made we, the said principal and surety, do hereby bind ourselves jointly and severally by these presents.

Executed by the said principal and surety on this 12th day of August, A. D. 1930.

The condition of the foregoing obligation is such that in a cause lately pending in the Circuit Court of the Fourth Circuit, Territory of Hawaii, In Equity, At Chambers, wherein the said principal obligor was complainant and the County of Hawaii and O. T. Shipman were respondents, on the 7th day of August, 1930, there was entered a final decree dismissing the bill of complaint of the complainant, and the [18] complainant, wishing to take advantage of Section 2509 of the Revised Laws of the Territory of Hawaii, 1925, has filed its appeal and notice of appeal, and it has undertaken that it will pay all costs further to accrue on said

appeal in case it be defeated in the appellate court. Now, if the said principal obligor shall fail to pay all such costs to accrue on said appeal, then this obligation shall be of full force and effect; otherwise void and of no effect.

THE MANA TRANSPORTATION COMPANY, LIMITED.

By (Sgd.) CARL S. CARLSMITH,

Its Attorney.

THE HAWAIIAN INSURANCE & GUARANTY COMPANY, LIMITED.

[Seal] By (Sgd.) GWYNN J. MATTHIAS.

[19]

Filed Aug. 25, 1930, at 10:25 o'clock A. M. [20]

No. 1974, No. 1975.

In the Supreme Court of the Fourth Circuit, Territory of Hawaii.

October Term,—1929.

On Appeal from Decree of Circuit Judge of Fourth Judicial Circuit.

THE MANA *TRANSPORTATION, LIMITED*,
an Hawaiian Corporation,

Complainant-Appellant,

vs.

OLIVER T. SHIPMAN, Treasurer of the County
of Hawaii, and COUNTY OF HAWAII,
Respondents-Appellees.

STIPULATION RE CONSOLIDATION OF
CASES Nos. 1974 AND 1975.

IT IS HEREBY STIPULATED AND AGREED, this Honorable Court consenting, by and between the parties hereto that the case of Isojiro Kitagawa, Complainant, vs. Oliver T. Shipman, Treasurer of the County of Hawaii, and the County of Hawaii, Respondents, No. 1974, and the case of Mana Transportation Company, Limited, Complainant, vs. Oliver T. Shipman, Treasurer of the County of Hawaii, and the County of Hawaii, Respondents, No. 1975 (as in order), be briefed and heard together as one case.

C. W. CARLSMITH,
CARL S. CARLSMITH,
Attorneys for Complainant.
W. H. BEERS,
Attorney for Respondents.

Approved.

ANTONIO PERRY,
Chief Justice. [21]

Filed Aug. 25, 1930, at 10:25 o'clock A. M. [22]

[Title of Court and Cause—Nos. 1974, 1975.]

ORDER RE CONSOLIDATION OF CASES
Nos. 1974 AND 1975.

IT IS HEREBY ORDERED that the cases of Isojiro Kitagawa, Complainant, vs. Oliver T. Ship-

man, Treasurer of the County of Hawaii, and County of Hawaii, Respondents, No. 1974, and Mana Transportation Company, Limited, Complainant, vs. Oliver T. Shipman, Treasurer of the County of Hawaii, and County of Hawaii, Respondents, No. 1975, both on appeal from the decree of the Circuit Judge of the Fourth Judicial Circuit, be briefed and heard together as one case.

[Seal]

ANTONIO PERRY,
Chief Justice. [23]

Filed January 16, 1931, at 10:07 A. M. [24]

No. 1975.

In the Supreme Court of the Territory of Hawaii.

MANA TRANSPORTATION COMPANY, LIMITED, an Hawaiian Corporation,
Complainant-Appellant,
vs.

OLIVER T. SHIPMAN, Treasurer of the County of Hawaii, and COUNTY OF HAWAII,
Respondents-Appellees.

DECREE ON APPEAL.

In the above-entitled cause, pursuant to the opinion of the above-entitled court rendered and filed December 30, 1930, the decree appealed from is affirmed, the costs of the Supreme Court, amounting to \$14.25, to be taxed against the complainant-appellant.

Dated at Honolulu, T. H., January 16, 1931.

By the Court:

[Seal]

J. A. THOMPSON,
Clerk Supreme Court.

Approved:

ANTONIO PERRY,
Chief Justice.

Form approved, Jan. 15, 1931.

C. NILS TAVARES,
Atty. for Appellees. [25]

Filed March 17, 1931, at 3:00 o'clock P. M. [26]

[Title of Court and Cause—No. 1975.]

PETITION FOR APPEAL.

To the Honorable ANTONIO PERRY, Chief Justice of the Supreme Court of the Territory of Hawaii.

Now comes the complainant-appellant herein, Mana Transportation Company, Limited, a Hawaiian corporation, by and through Carl S. Carlsmith, Esquire, and C. W. Carlsmith, Esquire, its attorneys, and feeling aggrieved by the final decree of this Court entered herein on the 16th day of January, 1931, hereby prays that an appeal may be allowed it from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, State of California, according to the laws of the United States in that behalf made and provided, and that a [27] transcript of the

record and proceedings upon which said decision and decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for said Circuit, and in connection with this petition, petitioner herewith presents its assignments of error.

And petitioner further prays that the amount of security may be fixed by order allowing this appeal.

Your petitioner further shows that said decision and decree was rendered in an action in equity, and that the Constitution of the United States is involved in said controversy.

Dated Hilo, Hawaii, this 25th day of February, 1931.

CARL S. CARLSMITH and
C. W. CARLSMITH,

Attorneys for Complainant-Appellant.

The service of a copy of the within petition for appeal this day admitted dated March 17, 1931.

E. R. MCGHEE,
Attorney for Appellees.

Territory of Hawaii,
Fourth Judicial Circuit,—ss.

C. W. Carlsmith, being first duly sworn, deposes and says: That he is one of the attorneys for Mana Transportation Company, Limited, petitioner herein; that he has read the above and foregoing petition for appeal and knows the contents thereof; that the same is true and that there is involved in the cause aforesaid constitutional questions.

C. W. CARLSMITH.

Subscribed and sworn to before me this 25 day of February, 1931.

[Seal]

HONORA J. NEILL,
Notary Public, 4th Circuit, T. H. [28]

Filed March 17, 1931, at 3:00 o'clock P. M. [29]

[Title of Court and Cause—No. 1975.]

ASSIGNMENT OF ERRORS.

Comes now Mana Transportation Company, Limited, an Hawaiian Corporation, complainant-appellant in the above-entitled cause, by Carl S. Carlsmith, Esq., and C. W. Carlsmith, Esq., its attorneys, and says:

That in the above-entitled cause in the Supreme Court of the Territory of Hawaii, and in the rendition of its final decision and decree therein, there are and have intervened manifest errors prejudicial to said complainant-appellant, to wit:

1. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, as applying to automobiles in use on the public highways of the Territory of Hawaii is not arbitrary and does not violate the rights [30] of the plaintiff as guaranteed to it by the Fifth and Fourteenth Amendments of the Constitution of the United States, and particularly in that portion of the said amendments wherein the plaintiff is

guaranteed the constitutional right of due process of law.

2. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, as applying to automobiles in use on the public highways of The Territory of Hawaii is not arbitrary and does not violate the rights of the plaintiff as guaranteed to it by the Fourteenth Amendment of the Constitution of the United States, and particularly in that portion of the said amendment wherein the plaintiff is guaranteed the constitutional right of equal protection of the laws.

3. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, imposing a tax graduated according to the weight upon automobiles not used or intended to be used upon the public highways of the Territory of Hawaii does not violate the rights of the plaintiff as guaranteed to it by the Fifth and Fourteenth Amendments of the Constitution of the United States, and particularly in that portion of the said amendments wherein the plaintiff is guaranteed the constitutional right of due process of law.

4. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925,

and by Acts 33, [31] 172 and 246 of the Session Laws of Hawaii, 1927, imposing a tax graduated according to the weight upon automobiles not used or intended to be used upon the public highways of the Territory of Hawaii does not violate the rights of the plaintiff as guaranteed to it by the Fourteenth Amendment of the Constitution of the United States, and particularly in that portion of the said amendment wherein the plaintiff is guaranteed the constitutional right of equal protection of the laws.

5. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, imposing an excise tax graduated according to weight upon automobiles not using the public highways of the Territory of Hawaii, nor intended to be used upon said highways, for the privilege of using said highways does not violate the rights of the plaintiff as guaranteed to it by the Fifth and Fourteenth Amendments of the Constitution of the United States, and particularly in that portion of the said amendments wherein the plaintiff is guaranteed the constitutional right of due process of law.

6. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, imposing an excise tax graduated according to weight upon automobiles not using the public highways of the Territory of Ha-

waii nor intended to be used upon said highways, for the privilege of using said highways does not violate the rights of the plaintiff as guaranteed to it [32] by the Fourteenth Amendment of the Constitution of the United States, particularly in that portion of said amendment wherein the plaintiff is guaranteed the constitutional right of the equal protection of the laws.

7. The Court erred in holding that a property tax levied according to a scheme of classification bearing no relationship to value does not violate the rights of the plaintiff as guaranteed to it by the Fifth and Fourteenth Amendments of the Constitution of the United States, and particularly in that portion of the said amendments wherein the plaintiff is guaranteed the constitutional right of due process of law.

8. The Court erred in holding that a property tax levied according to a scheme of classification bearing no relationship to value does not violate the rights of the plaintiff as guaranteed to it by the Fourteenth Amendment of the Constitution of the United States, and particularly in that portion of the said amendment wherein the plaintiff is guaranteed the constitutional right of the protection of the laws.

9. The Court erred in holding that the automobile weight tax imposed by Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii,

1927, is in part an excise tax charging for the use of the public highways.

10. The Court erred in holding that the automobile weight tax imposed by Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the [33] Session Laws of Hawaii, 1927, is not a property tax.

11. The Court erred in holding that the automobile weight tax imposed by Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, is in part a regulatory tax under the police powers.

12. The Court erred in holding that if an automobile is possessed, which is in perfect condition for use, it is intended for use on the public highways and will be so used.

13. The Court erred in holding that the automobile weight tax imposed by Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, is not a property tax because "the weight of automobiles does not bear any relationship to their value."

14. The Court erred in holding that vehicles lacking in vital parts are not automobiles or power-driven vehicles within the meaning of Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925,

and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927.

15. The Court erred in holding that "the instances of ownership of complete second-hand vehicles in good running order on hand and unused for a whole taxable year are extremely rare."

16. The Court erred in refusing to overrule respondent's demurrer to complainant's bill of complaint. [34]

17. The Court erred in affirming the decree of the trial court.

18. The Court erred in failing to specifically hold that a court of equity has jurisdiction in the above-entitled cause.

19. The Court erred in holding that a court of equity is without jurisdiction in the above-entitled cause.

20. The Court erred in holding that it had no jurisdiction over the above-entitled cause.

WHEREFORE, and in order that the foregoing assignments of error may be and appear of record, the said appellant herein files and presents the same to the said Court and prays that such disposition may be made thereof as may be in accordance with law, and said appellant herein prays a reversal of the above-mentioned decree heretofore made and entered by said Supreme Court of the Territory of Hawaii, and hereby appealed from.

Dated at Hilo, Hawaii, February 25th, 1931.

MANA TRANSPORTATION COMPANY,
LIMITED, a Hawaiian Corporation.

By CARL S. CARLSMITH and
C. W. CARLSMITH,
Its Attorneys.

The service of a copy of the within assignment of errors this day admitted, dated March 17, 1931.

E. R. MCGHEE,
Attorney for Appellees. [35]

Filed March 17, 1931, at 3:00 o'clock P. M. [36]

[Title of Court and Cause—No. 1975.]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF BOND.

Upon reading and filing the verified petition of the complainant-appellant, Mana Transportation Company, Limited, a Hawaiian corporation, for an appeal to the United States Court of Appeals for the Ninth Circuit, and upon consideration of the assignment of errors presented and filed herein,—

IT IS ORDERED that said appeal from the final decree of this Court, entered herein on the 16th day of January, A. D. 1931, is hereby allowed, and that said petitioner is ordered to file with the Clerk of this court within thirty (30) days from the date hereof an approved bond in the sum of Five Hundred Dollars (\$500.00), conditioned that the complainant-appellant will prosecute said ap-

peal to a final conclusion and effect and answer all damages and costs if complainant-appellant fails to make [37] good its said plea on appeal.

Dated at Honolulu, T. H., this 17th day of March, 1931.

[Seal]

ANTONIO PERRY,

Chief Justice of the Supreme Court of the Territory of Hawaii.

The service of a copy of the within order this day admitted, dated March 17, 1931.

E. R. MCGHEE,

Attorney for Appellees. [38]

Filed March 17, 1931, at 3:00 o'clock P. M. [39]

[Title of Court and Cause—No. 1975.]

CITATION ON APPEAL.

To the United States Court of Appeals for the Ninth Circuit:

The United States of America,—ss.

The President of the United States of America, to Oliver T. Shipman, and County of Hawaii,
GREETING:

YOU AND EACH OF YOU ARE HEREBY CITED AND ADMONISHED to be and appear in the United States Court of Appeals for the Ninth Circuit, at San Francisco, State of California, within thirty (30) days from the date of this citation, pursuant to an appeal allowed by the Supreme Court of the Territory of Hawaii filed in

Filed March 17, 1931, at 3:00 o'clock P. M. [42]

[Title of Court and Cause—No. 1975.]

PRAECIPE FOR TRANSCRIPT OF RECORD
ON APPEAL TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

To James A. Thompson, Esq., Clerk of the Supreme
Court of the Territory of Hawaii:

You will please prepare and certify a transcript of record in the above-entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the appeal allowed by the above-entitled court, and include in such transcript the following pleadings and proceedings, as follows:

1. Original bill of complaint.
2. Demurrer dated July 8th, 1930.
3. Ruling on respondent's demurrer.
4. Final decree, dated August 7th, 1930. [43]
5. Notice of appeal.
6. Clerk's minutes.
7. Bond on appeal.
8. Stipulation filed August 25, 1930.
9. Order of Supreme Court filed August 25, 1930.
10. Opinion of the Supreme Court of the Territory of Hawaii, filed December 30th, 1930.
11. Decree entered January 16th, 1931.
12. Petition for appeal.
13. Assignment of errors.

32 *Mana Transportation Company, Limited,*

14. Order allowing appeal.

15. Bond on appeal.

16. Citation on appeal.

17. All orders allowing time to docket cause.

18. This praecipe.

You will annex to and transmit with the record the original petition for appeal, assignment of errors, order allowing appeal and citation, and also your certificate under the seal in compliance with Rule 14 of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Hilo, Hawaii, March 17th, 1931.

CARL S. CARLSMITH and
C. W. CARLSMITH,

Attorneys for Mana Transportation Company, Limited, a Hawaiian Corporation.

The service of a copy of the within praecipe this day admitted, dated March 17, 1931.

E. R. MCGHEE,
Attorney for Appellant. [44]

Filed April 6, 1931, at 3:40 o'clock P. M. [45]

[Title of Court and Cause—No. 1975.]

ORDER ENLARGING TIME TO AND INCLUDING MAY 16th, 1931, TO PREPARE AND TRANSMIT RECORD ON APPEAL AND DOCKET CAUSE.

Upon the application of the above-named appellant and good cause appearing therefor, and pur-

suant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit,—

IT IS HEREBY ORDERED that the above-named appellant and the Clerk of this court be and they are hereby allowed until and including the 16th day of May, 1931, within which to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the record in the above-entitled cause on appeal in this court, together with the assignment of errors and all other papers required as part of said record. [46]

Dated at Honolulu, T. H., April 4, 1931.

[Seal]

ANTONIO PERRY,
Chief Justice of the Supreme Court of the Territory
of Hawaii.

Approved:

E. R. MCGHEE,
Attorneys for Appellee.
CARL S. CARLSMITH and
C. W. CARLSMITH,
By H. L. WRENN,
Attorneys for Appellant. [47]

Filed April 9, 1931, at 3:00 P. M. [48]

[Title of Court and Cause—No. 1975.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:
That Mana Transportation Company, Limited, a

Hawaiian Corporation, as principal, and the Hawaiian Insurance and Guaranty Company, Limited, a corporation, as surety, are held and *firm* bound unto Oliver T. Shipman, Treasurer of the County of Hawaii, his successors in office, and the County of Hawaii, in the penal sum of Five Hundred Dollars (\$500.00), for the payment of which, well and truly to be made to the said Oliver T. Shipman, Treasurer of the County of Hawaii, his successors in office, and the County of Hawaii, do bind themselves and their respective successors firmly by these presents.

THE CONDITION of the foregoing obligations is that on the 17th day of March, A. D., 1931, the above-bounden principal appealed to the United States Circuit Court of Appeals for the Ninth Circuit from that certain decree made and entered in the above-entitled court and cause on the 16th day of January, A. D. 1931, by the Supreme Court of the Territory of Hawaii,— [49]

NOW, THEREFORE, if said principal shall prosecute said appeal to effect and answer all damages and costs if it fails to sustain said appeal, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF the said Mana Transportation Company, Limited, as principal, and the Hawaiian Insurance and Guaranty Company,

Limited, as surety, have hereunto set their hands this 8th day of April, 1931.

MANA TRANSPORTATION COMPANY,
LIMITED.

By CARL S. CARLSMITH,
Principal.

By HEATON L. WRENN,
Its Attorney.

HAWAIIAN INSURANCE AND GUAR-
ANTY COMPANY, LIMITED.

By GWYNN I. MATTHIAS, (Seal)
Its Treasurer,
Surety,

The foregoing bond is approved.

[Seal]

ANTONIO PERRY,

Chief Justice of the Supreme Court of the Terri-
tory of Hawaii. [50]

[Title of Court and Cause—No. 1975.]

CERTIFICATE OF THE CLERK OF THE SU-
PREME COURT OF THE TERRITORY OF
HAWAII TO THE TRANSCRIPT OF REC-
ORD ON APPEAL.

Territory of Hawaii,
City and County of Honolulu,—ss.

I, James A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii, by virtue of the petition for appeal, filed March 17, 1931, by complainant, the original whereof is attached to the foregoing transcript of record, being pages 26 to 28,

both inclusive, and in pursuance to the praecipe for transcript of record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, filed March 17, 1931, on behalf of complainant-appellant, to me directed, a copy whereof is attached to the foregoing transcript of record, being pages 42 to 44, both inclusive, DO HEREBY TRANSMIT to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, the foregoing transcript of record, being pages 1 to 25, both inclusive, and pages 48 to 50, both inclusive, AND I CERTIFY the same to be full, true and correct copies of the pleadings, record, entries, minutes, opinion and final decree, which are now on file in the office of the Clerk of the Supreme Court of the Territory of the Hawaii, in the cause entitled "The Mana Transportation Company, Limited, an Hawaiian Corporation, Complainant, vs. Oliver T. Shipman, Treasurer of the County of Hawaii, and County of Hawaii, Respondents," Number 1975.

I DO FURTHER CERTIFY that the original assignment of errors, dated March 17, 1931, being pages 29 to 35, both inclusive, the original order allowing appeal and fixing amount of bond, dated March 17, 1931, being pages 36 to 38, both inclusive, the original citation on appeal, filed March 17, 1931, being pages 39 to 41, both inclusive, and the original order enlarging time to and including May 16, 1931, to prepare and transmit record on appeal and docket cause, filed April 6, 1931, being pages 45 to 47, both inclusive, are hereto attached and herewith returned. [51]

I DO FURTHER CERTIFY that Item 10 in the praecipe for transcript of record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, being the Opinion of the Supreme Court of the Territory of Hawaii (reported in Volume 31, Hawaii Reports, at pages 726 to 740, both inclusive), is attached to the transcript of record on appeal in the case of "Isojiro Kitagawa, Complainant-Appellant, vs. Oliver T. Shipman, Treasurer of the County of Hawaii, and County of Hawaii, Respondents-Appellees," being pages 47 to 63, both inclusive, of said transcript of record, also on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, the two said causes having been consolidated and heard together by order of the Supreme Court of the Territory of Hawaii, being pages 24 to 25, of the foregoing transcript of record, and the said Supreme Court in deciding the two said causes gave but one decision. For this reason a copy of the said decision has not been made a part of this record except by reference.

I LASTLY CERTIFY that the total cost of the foregoing transcript of record \$25.10 which amount has been paid by Carl S. Carlsmith, Esq., the attorney for the complainant-appellant.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 23d day of April, A. D. 1931.

[Seal] JAMES A. THOMPSON,
Clerk of the Supreme Court of the Territory of
Hawaii. [52]

[Endorsed]: No. 6455. United States Circuit Court of Appeals for the Ninth Circuit. *Mana Transportation Company, Limited*, a Hawaiian Corporation, Appellant, vs. *Oliver T. Shipman*, Treasurer of the County of Hawaii, and County of Hawaii, Appellees. Transcript of Record. Upon Appeal from the Supreme Court of the Territory of Hawaii.

Filed May 1, 1931.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.